

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
ROWE, ULKU, : Docket # 1:19-cv-08655-
 : LGS-GWG
 :
Plaintiff, :
 :
- against - :
 :
GOOGLE LLC, : New York, New York
 : January 5, 2021
 :
Defendant. :
 : TELEPHONE CONFERENCE
----- :

PROCEEDINGS BEFORE
THE HONORABLE JUDGE GABRIEL W. GORENSTEIN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: OUTTEN & GOLDEN, LLP
BY: CARA ELIZABETH GREENE, ESQ.
MAYA JUMPER, ESQ.
SHIRA GELFAND, ESQ.
685 Third Avenue, 25th Floor
New York, New York 10017
212-245-1000

For Defendant: PAUL HASTINGS LLP
BY: SARA BRADY TOMEZSKO, ESQ.
200 Park Avenue
New York, New York 10166
212-318-6000

Transcription Service: Carole Ludwig, *Transcription Services*
155 East Fourth Street #3C
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

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APPEARANCES CONTINUED:

For Defendant:

PAUL HASTINGS LLP
BY: KENNETH WILLIAM GAGE, ESQ.
191 North Wacker Drive 30th Floor
Chicago, Illinois 60606
312-499-6046

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None

E X H I B I T S

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THE CLERK: In the matter of Rowe v. Google, LLC,
docket number 19-cv-8655.

Counsel, please state your appearances, starting
with the plaintiff.

MS. CARA GREENE: Cara Greene of Outten & Golden
for the plaintiff. And with me today is Maya Jumper and
Shira Gelfand.

MS. SARA TOMEZSKO: And for Google this is Sara
Tomezsko of Paul Hastings. And I'm joined by Ken Gage of
Paul Hastings, as well.

HONORABLE GABRIEL W. GORESNSTEIN (THE COURT):
I'm sorry, what's your name?

MS. TOMEZSKO: Sara Tomezsko from Paul Hastings on
behalf of Google.

THE COURT: Okay. I didn't see your name in the
letter, so spell your last name, please?

MS. TOMEZSKO: Sure. It's T as in Tom, o-m, as in
Mary, e as in Edward, Z as in Zulu, S as in Sam, K as in
kangaroo, o.

THE COURT: Okay. And you'll be speaking for the
defendant?

MS. TOMEZSKO: Yes, your Honor.

THE COURT: And the subpoenaed person. Okay.

All right, so we're being recorded. If anyone is

not actually speaking, they should have their phone on mute, and any recording of this proceeding or dissemination by anyone else is strictly prohibited.

All right, we're here based on a letter from Google, I guess on behalf of themselves and Ms. Greene, and a responsive letter from the plaintiff and reply letter, Dockets 62, 65 and 66.

I guess we'll -- I know the burden is on the defendants, but you know, this is a Rule 45 subpoena. And so we're in a slightly different situation, and I have to assure myself there's no undue burden on the person being subpoenaed. And I know they have the burden on it, but I think I probably have more questions right now for the plaintiffs. So why don't we just start with them, and then I'll hear from the defendants?

MS. GREENE: Yes, your Honor. This is Cara Greene if Outten & Golden again for the plaintiff. I think, you know, what we have here is someone who is a former employee. And during the time she was employed by Google, she was in a high leadership position. That is not and should not be the, you know, be-all/end-all of the inquiry. The cases that defendant cited in its reply letter are supportive of the fact that highly-placed executives are not immune from discovery, that they're not high-ranking

1 corporate executives, they're not automatically given
2 special treatment to excuse them from being deposed. And
3 the real inquiry is whether an individual possess relevant
4 knowledge and whether there's any potential possibility of
5 harassment or potential disruption of business.
6

7 The case that defendants cite, *Hallmark Licensing*
8 *LLC v. Dickens* --

9 THE COURT: If I can just take you on another
10 track --

11 MS. GREENE: Sure.

12 THE COURT: -- I'm not worried about the case law.
13 The cases are all very fact specific. I'm really trying to
14 figure out what she has to contribute, and it almost
15 doesn't matter that she was a high-level executive; I would
16 do this for any deponent. If they don't have anything to
17 contribute to a deposition, then I'm unlikely to cause that
18 deposition to occur. So I think I'd really like to focus on
19 what her -- what can rationally be expected from the
20 deposition from her and whether it has anything to do with,
21 you know, your efforts to pursue your claims in this case.

22 So why don't you start with your best-case
23 scenario in terms of what you have reason to believe she
24 knows and could offer a deposition that would make it more
25 likely than not that, you know, your case is the way you

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2 say it is?

3 MS. GREENE: Thank you, your Honor. There is
4 actually three different buckets of relevant information
5 that Ms. Greene possesses. The first is relevant to the
6 hiring and the role of our plaintiff and her comparators in
7 the --

8 THE COURT: Are you talking about her initial
9 hiring?

10 MS. GREENE: Correct. And the hiring of the
11 comparators into --

12 THE COURT: Wait. I've got to do this one piece at
13 a time. So I assume you're starting with your best case,
14 not your chronologically most early case. So if this is
15 your best case, I really want to give you, you know, all
16 the buckets. Let's start with that. So what is it?

17 MS. GREENE: Well, I'm not sure, then, if we're
18 not going chronologically, let's start with a different
19 bucket. And that relates to the hiring of the financial
20 services position and Ms. Rowe's complaints related to
21 that, because those two really go together. Ms. Greene was
22 involved in, first of all, setting the priority for the
23 financial services vertical and the hiring for that
24 position. She --

25 THE COURT: Okay, and you know that --

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MS. GREENE: -- interviewed --

THE COURT: You know that because --

MS. GREENE: We know that because of --

THE COURT: -- [indiscernible] testified to it?

MS. GREENE: -- I'm sorry. Yes, your Honor. I'm sorry, I don't mean to speak over you. It's hard on the phone to know --

THE COURT: Yes, unfortunately, I can't control the phones in my office, so you just have to keep going.

MS. GREENE: Sure. So Mr. Shaukat, who directly reported to Ms. Greene, testified at his deposition that Ms. Greene -- that the financial services vertical was a priority for Ms. Greene, first of all. Both the testimony of Ms. Greene through her deposition -- through her declaration, as well as Mr. Shaukat testimony, supports that she interviewed the final candidates. So the VP had a financial services position. There are documents in the record that evidence that Mr. Shaukat discussed Ms. Rowe with Ms. Greene in connection with the head of financial services position, as well as other candidates for that position. And again --

THE COURT: Okay, so let's -- you know, I've read the letters very carefully; I've read the declaration several times. And you're really going to have to make a

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1 better case for me, because the mere fact that she, you
2 know, let's just start with what you started with, you
3 know, talked about what had to be in the role of the
4 director of this vertical whatever it is; that's not
5 terribly convincing to me that she has to be deposed on it
6 because it doesn't seem like this is an issue that you need
7 her specific testimony on and that it has any great bearing
8 on your ability to prove your case. So you need to dig a
9 little into the weeds here, explaining why -- like, what is
10 it she's going to testify that you could reasonably think
11 might be different from what you've already gotten in
12 deposition testimony. Be very specific; like, what -- I
13 know you can only speculate, but at least talk about the
14 areas of knowledge that she's going to have that will, you
15 know, make it easier for you to prove your case.

17 THE COURT: You're correct that it's without
18 testi -- and deposing her, it's hard to know, but one would
19 assume that what qualifications were relevant to the role,
20 how she was --

21 THE COURT: Okay, stop, stop, stop, stop. I'm
22 going to do this one piece at a time. So the
23 qualifications for this position, you think that you have
24 not gotten the full answer from Shaukat as to what the
25 actual qualifications were; there aren't documents on this?

1
2 They're things that only she would know?

3 MS. GREENE: As a decision-maker, as someone who
4 was devising the strategies for the financial services
5 vertical, her perception specifically and her unique
6 viewpoint as to what made a candidate desirable and
7 qualified is relevant. You know, this is not a situation
8 where this is a, you know, low-level position that's
9 being --

10 THE COURT: Okay, but let's talk about -- I want
11 to ask you why it's relevant because, presumably, whatever
12 she -- she was not -- never in fact made the final decision
13 about this because she left by the time it happened. So
14 we're talking about something that she was involved in only
15 up to a point, that she communicated to the person who was
16 responsible for, you know, making enormous amounts of
17 judgments about who was going to be a finalist; in fact,
18 the only person [indiscernible] she was responsible in any
19 way for that. Why does it matter what her vision was?

20 MS. GREENE: As the person who was making, you
21 know, giving the final sign-off and interviewing the
22 candidates, the final candidates -- and that's an important
23 point -- what the qualifications were matter because, to
24 the extent there's an argument that our client, that
25 defendants have asserted she wasn't qualified, that she was

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1 a Level 8, that she didn't have it, if Ms. Greene were to
2 testify, you know, these are the things that I considered
3 important: years of experience and performing in this
4 financial services industry, connections, whatever those
5 criteria might be that Ms. Greene was evaluating personally
6 in reaching a decision about whether someone was a good
7 candidate for the position. That provides, then, you know,
8 criteria against which Ms. Rowe can be measured. And
9 that's important for purposes of establishing her
10 qualifications, both with respect to the financial services
11 vertical, but also with respect to whether she was
12 operating as someone who was at a Level 9, or perhaps even
13 higher, versus a Level 8. These claims are all --

14
15 THE COURT: Hold on, hold on, hold on. I didn't
16 under the Level 8 [indiscernible]. Tell me about that
17 again.

18 MS. GREENE: Sure. If I can just back up for a
19 moment, because I think there's some context that will help
20 in this conversation. When it came -- initially Ms. Rowe
21 has challenged the leveling that -- decisions that were
22 made at the time of hire, i.e., that she should have been
23 hired as a Level 9 comparable to the men in the Level 9
24 position, as opposed to the Level 8. At the time then when
25 the financial services vertical head position was being

1 hired or recruited, interviewed, etc., Ms. Rowe became
2 concerned that her leveling as an eight was unfairly
3 torpedoing her chances for that position; that she was not
4 being considered based on her true qualifications but on a
5 level that had been assigned to her improperly --

6
7 THE COURT: Okay. I do recall this; I just didn't
8 recall the Level 8 and 9 piece. That's how I got confused.
9 Okay, so I remember there were complaints in the email
10 about the initial hiring about the Level 8 or 9. So how
11 does that relate to what you were just talking about?

12 MS. GREENE: So with respect to the criteria that
13 Ms. Greene was applying or considering in connection with
14 candidates for the head of financial services vertical,
15 that puts out a criteria that's independent of the levels
16 potentially, but also relates to the levels in terms of how
17 Google assessed what level someone was operating at or was
18 working in. And so here it relates both to Ms. Rowe's
19 qualifications for the head of financial services vertical,
20 whether she was being adequately considered, whether she
21 was the most qualified individual for the position, as well
22 as whether she was properly leveled in the first place.
23 And then Ms. Greene did raise a complaint directly -- I'm
24 sorry, Ms. Rowe did raise a complaint directly to
25 Ms. Greene that she had been improperly leveled and that it

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was impacting her consideration for the VP of financial services vertical --

THE COURT: What does that have to do -- I thought we were onto something, and now I've lost you. You know, people complain to higher level people all the time; and that doesn't mean they have knowledge of anything. So tell me why that complaint, which I think Greene said she didn't specifically remember. I don't remember that. But what does that have to do with what we were just talking about?

MS. GREENE: That -- it relates to two things. One is the issue again of the qualifications for the role and whether Ms. Greene or Ms. Rowe met those qualifications and whether Ms. Greene understood her to meet the qualifications. Separately it also relates to what Ms. Greene --

THE COURT: What does it matter if she thought she met the qualifications if she's not the one who made the ultimate decision to fill that position, it happened after she left?

MS. GREENE: At the time -- it goes to whether Mr. Shaukat was operating in a discriminatory fashion in his consideration of Ms. Rowe. Because if you have someone senior to him saying these are the qualifications and objectively Ms. Rowe meets those qualifications and you

1
2 have Mr. Shaukat saying something different, that
3 contradictory testimony is evidence of pretext. It
4 undermines Mr. Shaukat's --

5 THE COURT: Okay. So if the Shaukat --

6 MS. GREENE: -- testimony on this point.

7 THE COURT: Okay. So your hope would -- again,
8 putting it in the way -- the first hope that would happen,
9 your hope is that if Rowe testifies, it might be that she
10 will contradict what Shaukat said at his deposition
11 testimony as to what she was expecting for a successful
12 candidate in this position, is that right?

13 MS. GREENE: Yes, your Honor. And now I understand
14 what you're asking. Yes, Ms. Greene's testimony we hope
15 will provide testimony that contradicts Mr. Shaukat's
16 testimony, creating contradictions that are suggestive
17 pretext, as well as support certain assertions we've made
18 with respect to Ms. Rowe's qualifications for the position.

19 THE COURT: Okay. And what about the fact that in
20 her affidavit she says she has no recollection of
21 [indiscernible]?

22 MS. GREENE: Well, here I think that the case law
23 is important because it supports that someone's
24 statements -- and I'm again looking at the *Hallmark* case --
25 that they don't have unique knowledge of relevant facts or

1
2 in this case don't remember that that's subject to testing
3 by the examining parties. The substitution of a declaration
4 for deposition testimony without the benefit of the
5 documents, first of all, that might refresh her
6 recollection and, you know, artful questioning that might
7 solicit testimony that wouldn't be, you know, provided in
8 the context of a declaration prepared by her own counsel is
9 supportive of her deposition moving forward.

10 THE COURT: Right. I mean, the problem is there's
11 also case law that talks about, you know, how declarations
12 disclaiming knowledge in fact are effective, and there's
13 case law saying that's the sine qua non of winning such a
14 motion, and motions have been won on that basis. So it
15 can't be that it's useless, right? I guess I have to make
16 some judgment call on it. But the case law can't be that
17 it's meaningless to have such a declaration, is it?

18 MS. GREENE: I don't think that it's meaningless,
19 your Honor; but here the declaration outlines and supports
20 that we're saying with respect to the fact that she does
21 have relevant knowledge. She's saying I don't remember;
22 it's not that she's saying I had no connection to these
23 things. She's saying she doesn't remember. Here we have
24 documents that may be helpful in refreshing her
25 recollection, both with respect to the initial hiring

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decisions in OCTO as well as with respect to the financial services vertical position as well as Ms. Rowe's complaint of discrimination. And, you know, we should be able to present her with those documents, ask questions that may refresh her recollection and get her full testimony on these subjects.

THE COURT: Okay. Are you ready to go to another bucket, or is there more in this one?

MS. GREENE: Again, looking at the exhibits that we submitted in connection, there are documents that support our position, so I would just note that for your Honor's consideration.

THE COURT: Are you talking about Exhibits 7, 8 and 9?

MS. GREENE: As well as Exhibit 6, your Honor, which is the recruiters --

THE COURT: But, you know, I looked at the -- I saw you cited to 7, 8 and 9, and I was very interested in what they might say. And I know they're -- I mean, temporarily retrieving them is futile -- but I didn't know -- you didn't cite me -- they're many pages long, and you didn't cite me -- it seems to me you cited me to the first page of each. Is that where I was supposed to be looking?

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MS. GREENE: No, I apologize, your Honor, that we didn't --

THE COURT: I didn't see anything there. So let's just take Exhibit 7. What page should I look at in Exhibit 7, what you were talking about?

MS. GREENE: Yes, your Honor, give me one moment to direct you to that specific page.

So with respect to Exhibit 7, if you look at the page Bates stamped GoogRowe0056523.

THE COURT: Okay. There's a bunch of rows. What row number should I look at?

MS. GREENE: The final row, dealing with --

THE COURT: Okay. Dealing with -- yes, yes, that's there. Hold on. Hold on. Okay, well, this is one of those two finalists, right?

MS. GREENE: Correct. And then the next page is another finalist.

THE COURT: So what is this going to -- I mean, what is this going to -- this is already laid out in the letters and I think, conceivably in the declaration of Shaukat, was it not, that these interviews were taking place?

MS. GREENE: Correct. But this demonstrates that Ms. Greene was really involved in this process, right? The

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interview request, understanding of the candidates, she did indeed interview them.

THE COURT: No, no, no, I'm asking what this exhibit adds to what was already in the letters and in Shaukat's declaration. That's what I thought you were telling me, was that somehow what we see in here is either going to refresh her in some way that these don't or that it's going to provide additional information that's not already subsumed in Shaukat's declaration. Is there something like that in these exhibits?

MS. GREENE: So, for instance, at Ms. Greene's deposition, asking her -- again, this is a document received, Diana Mayfield, "She was a no quantity. What does that mean? What did you -- we're very high on her candidacy. What was your understanding of why they were high on her candidacy? What were the qualifications that made her, you know, an excellent candidate? What was communicated to you from Mr. Shaukat about why she was an excellent candidate or why you're high on her candidacy?" Then --

THE COURT: Did you ever ask Shaukat as to how that particular box got worded; was that something he worked or that someone else worded that -- I mean, is there any evidence Greene wrote that?

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2 MS. GREENE: Greene did not write this. This is a
3 document that was provided to Greene --

4 THE COURT: Right. So that's what I'm trying to
5 understand.

6 MS. GREENE: -- from Julie Wong.

7 THE COURT: I understand that --

8 MS. GREENE: But this is not.

9 THE COURT: That's why I'm trying to figure out
10 why this -- it's one thing to ask someone about something
11 they wrote, but it's quite different to ask something about
12 something someone wrote to them. And it's -- what this is
13 something that someone whom you deposed wrote, and that's
14 the person who would know what this meant.

15 MS. GREENE: Well, that's -- I'm sorry, that's not
16 actually the case. This is an email from Julie Wong, who is
17 not someone we deposed, but she --

18 THE COURT: Well, okay, we can talk about that.
19 The question is does Ms. Wong, who does she get that from;
20 does she write it herself. And that, maybe you're telling
21 me that Wong needs to be deposed. That may be a case for
22 Wong. I don't have to worry about that now, but it's not
23 much of a case for Greene.

24 MS. GREENE: Your Honor, respectfully, the issue
25 with Ms. Greene is to what her understanding was with

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respect to why Diane Mayfield was a likely finalist for the position, what made her qualified. And, again, I'm interested in particular in Ms. Greene's understanding, Ms. Greene's knowledge.

THE COURT: I understand that. And it would be one thing if we were in a vacuum of facts here, but I thought that it had been established that Shaukat chose these finalists and asked Rowe to interview them. Was that not established in Shaukat's deposition?

MS. GREENE: Shaukat did ask Ms. Greene to interview these candidates; but, for instance, asking Ms. Greene what Mr. Shaukat communicated to her in connection with that, because they did have conversations around this. My point with respect to this document was that, while Ms. Greene says she may not recollect, when presented with a document like this, do you recall receiving this document? Do you recall that there was an interview request for you to interview Ms. Mayfield? Does that refresh your recollection about why you were asked to interview her? What was communicated to you at the time you were asked to interview her?

THE COURT: Okay, let's talk about --

MS. GREENE: That's the benefit of this document.

THE COURT: Let's talk about those two things, why

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2 you were asked and what was communicated to you. The

3 second one perhaps I understand. Why you were asked, I

4 don't understand, because only Shaukat knows why she was

5 asked. Now, what Shaukat then said to her about Mayfield,

6 obviously, you asked Shaukat or you had the opportunity to

7 ask that. And then in terms of, you know, what he said, now

8 we're back to this hope that, you know, what she remembers

9 may be different from what he recollects. And I understand

0 that, and I'm still a little concerned about the fact that

1 she said, you know, "I don't have any memory." And it's

2 hard to know why something like this is going to jog her

3 memory when she's already been shown Shaukat's deposition

4 about this sequence of events and it hasn't. I mean, I'm

5 not saying it's impossible, but do you see my problem?

16 MS. GREENE: Uh --

17 THE COURT: And can you alleviate it?

18 MS. GREENE: Your Honor, I would say that there
19 are other documents, as well, including one where
20 Mr. Shaukat communicates to Ms. Greene particularly with
21 respect to Ms. Rowe and her consideration for the role that
22 may -- I think the cumulative impact of these documents may
23 trigger Ms. Greene's memory to the extent that she doesn't
24 independently recall facts between now and the deposition.
25 I've, you know, taken enough depositions to know that when

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someone is sitting there being deposed by the other side, they sometimes, you know, recollect things that they independently wouldn't have recollected.

This is -- the prejudice here is very small where we're talking about a remote deposition that can be scheduled around Ms. Greene's schedule. It's not a full-day deposition. I think we've indicated as much to the other side; and given, you know, that there are discrete buckets of information that she possesses here. And so, you know, under the circumstances where there are, again, multiple areas of inquiry of which she possesses unique and independent knowledge, where that knowledge may serve to contradict the testimony of Mr. Shaukat and support Ms. Rowe's testimony, the -- I think the balance weighs in favor of the deposition moving forward.

THE COURT: Okay. I haven't finished with the buckets yet. Are we finished with the search for the VP?

MS. GREENE: Again --

THE COURT: Should we --

MS. GREENE: -- beyond what's in the exhibits that are cited in the letter, yes, your Honor.

THE COURT: Okay. So we talked about what's your next best bucket?

MS. GREENE: The next bucket would be with respect

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to the hiring of individuals into the OCTO position,
Ms. Greene -- I'm sorry, Ms. Rowe and her comparators.
Ms. Greene concedes that she was involved in the hiring --
THE COURT: So this goes to Greene's initial hire?
MS. GREENE: Rowe's initial hire, yes, your Honor.
THE COURT: I'm sorry, Rowe's initial hire. Okay.
So this is the start of the leveling issue, is that it?
MS. GREENE: Correct, your Honor.
THE COURT: Okay. Give me a second to look at my
notes.
Okay, yes, so we had another problem here. You
cite to Exhibit 6, and I didn't know what page you were
citing to.
MS. GREENE: If your Honor gives me one moment, I
can direct to the specific --
THE COURT: Take your time.
MS. GREENE: So, your Honor, if you turn to the
page Bates stamped GoogRowe00018000 --
THE COURT: Okay, hold on. Okay. And where on
that page should I look, the one at the bottom?
MS. GREENE: The last bullet, your Honor.
THE COURT: [indiscernible]?
MS. GREENE: Yes, the sub-bullet under that. So
just as context, this is notes from an HR interview with

1
2 Jenny Burgess, who was the recruiter involved in the OCTO
3 hiring. And the bottom bullet notes, "Leadership candidates
4 don't go to HC."

5 THE COURT: Let me just read it.

6 MS. GREENE: Sure.

7 THE COURT: What's Urs?

8 MS. GREENE: Urs is a senior member of Google's
9 leadership team.

10 THE COURT: Okay. So my recollection on this was
11 that you had -- there was testimony from others about this
12 process. And I don't remember now who that is. Maybe I
13 should hear from the defendants. But you might as well
14 address it, too.

15 MS. GREENE: Yes, your Honor. There has been
16 multiple and sometimes conflicting testimony about the
17 approval process for hiring levels. Mr. Graniss presented a
18 pocket that included a level designated for the proposed
19 candidate. There has been testimony that that packet went
20 to a hiring committee. Ms. Burgess indicated that for
21 leadership candidates like Ms. Rowe, it didn't go to a
22 hiring committee for approval and for ultimate decision-
23 making as to the level; it went straight to Diane. And
24 Diane inserted herself to review and approve and then pass
25 up to Urs for final approval. And so that's -- you know,

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not consistent with the hiring committee approach that others testified to. But Ms. Burgess would, as a recruiter, have the most direct knowledge, and her indication to HR and she at her deposition said that these were accurate notes, was that Diane was the who reviewed the packets with respect to the OCTO candidates and approved them for Urs's final approval.

THE COURT: Okay. And, of course, we have Ms. Greene's statement she has no recollection of the 2016 hiring or compensation at her level.

MS. GREENE: So here, your Honor, is where actually showing those hiring packets that she would have reviewed to Ms. Greene may refresh her recollection as to those hiring packets, as to the candidates and as to the prospective levels and things that she considered or did not consider in approving the leveling recommendations.

THE COURT: Okay. Anything else on the OCTO hire?

MS. GREENE: Ms. Greene herself acknowledges that she was involved in at least the hiring of at least one of Ms. Rowe's comparators.

THE COURT: You're talking about --

MS. GREENE: And so that is someone --

THE COURT: -- a senior engineer?

MS. GREENE: Yes, your Honor. So that is someone

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2 to whom she has personal knowledge as to whether -- and ask
3 her questions that would relate to whether or not he is a
4 comparator and is performing work of a similar nature to
5 Ms. Rowe would be relevant for purposes of establishing the
6 equal pay claims. It also is relevant with respect to
7 Google's defenses on the equal pay claims and whether in
8 fact they were following in a bona fide process or
9 considering bona fide defenses in making those leveling
10 decisions.

11 THE COURT: Okay, do you want to do the remaining
12 bucket?

13 MS. GREENE: The remaining bucket relates to
14 Ms. Greene's complaint of discrimination -- I'm sorry --
15 Ms. Rowe's complaint of discrimination to Ms. Greene. And
16 to your Honor's point earlier that, you know, people can go
17 to the highest levels. And that's true, but here there's a
18 distinction in that Ms. Greene was Ms. Rowe's skip level
19 manager, meaning that it was her manager's reporting
20 manager. And so here a complaint of discrimination is not
21 simply to, you know, the CEO; it's to her skip level
22 manager. And what her skip level manager did in response
23 to that complaint of discrimination goes to any defenses
24 that Google may assert. It goes to things like an
25 assessment for punitive damages. If the skip level manager

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2 did not take the steps that she should have taken in
3 responding to that complaint of discrimination, that's
4 relevant for purposes of those claims and potential
5 assessment of punitive damages.

6 THE COURT: Okay. I'll hear from the defendant.

7 MS. TOMEZSKO: Thank you, your Honor. This is Sara
8 Tomezsko from Paul Hastings.

9 If I may, I would like to address the buckets in
10 the same order as Ms. Greene has addressed them. And so
11 we'll start with the hiring of the head of financial
12 services. Plaintiff is speculating that Mr. Shaukat, who
13 was the hiring manager for the role and has testified under
14 oath that he was the ultimate decision-maker for the role,
15 there's no evidence that he applied any different criteria
16 than Ms. Greene would have applied. So the fact that he
17 might or that she might provide conflicting testimony, as
18 you indicated before, is purely speculative; and plaintiff
19 can only speculate to that. She can't point to any evidence
20 that there are different criteria applied.

21 But even so, let's just assume for argument's sake
22 that she had in her mind a different set of criteria that
23 she would have preferred the ultimate candidate for the
24 role to possess, I still don't see how that advances either
25 plaintiff's claim or our defenses because she did not

1 participate in the decision as to whether Ms. Rowe, the
2 plaintiff, would get this role. That was Tariq's decision
3 that made after --

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5 THE COURT: I think I -- I mean, I remember
6 pointing that out, but I think the plaintiff's answer is,
7 well, I want to know if Shaukat is honestly telling me
8 this. And if it turns out Greene communicated something
9 else to him, then that would suggest that what he's saying
10 is untrue and he was applying, you know, some other
11 criteria. I think that's the point, not -- they admit that
12 she said that Greene is not the final, you know, decision-
13 maker on the hire.

14 MS. TOMEZSKO: So for argument's sake, your Honor,
15 let's assume that she did have different criteria, I still
16 don't see what that shows to advance plaintiff's claim.
17 She claims that it might indicate that Tariq Shaukat was
18 acting with some sort of discriminatory animus, but
19 discrimination on what basis. She's claiming here that
20 there's discrimination on the basis of her gender. So if
21 he was applying different criteria but he still identified
22 two women finalists to be interviewed and potentially take
23 the role over Ms. Rowe, then whatever criteria she was
24 applying in the world wouldn't suggest that Tariq made his
25 decision based on Ulku's gender. It just doesn't make sense

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2 in that regard.

3 THE COURT: Okay. Keep going.

4 MS. TOMEZSKO: And she mentioned that, you know,
5 whether there are qualifications that Ms. Greene might have
6 had in mind for someone who was the head of financial
7 services. That's a different position that plaintiff
8 sought but never had. And so whether plaintiff was
9 qualified for that role has no bearing on whether she was
10 appropriately leveled as a Level 8 or a Level 9 for the
11 role she had. I'm not seeing a connection between the
12 criteria that Diane Greene might have had in her mind, to
13 the extent that it was even different from what Mr. Shaukat
14 had in mind, for a different role has any relevance to
15 whether the initial hiring determination made about two
16 years earlier was well-founded. I don't think there's a
17 connection there, and I don't think that deposing
18 Ms. Greene on that issue is going to shed light on the
19 leveling decision separate and apart from the hiring of the
20 head of financial services role.

21 And to the extent that she would like to ask, you
22 know, and understand what Mr. Shaukat told Ms. Greene about
23 Ms. Rowe, the plaintiff's, candidacy, she should ask and
24 has asked Mr. Shaukat, not to the extent, as you point out,
25 that Ms. Greene recalls something different. Number one, I

1 would say that's a low probability because she reviewed
2 Tariq's declaration basically stating, you know, what he
3 discussed with Ms. Rowe and the hiring process for that
4 role, that she reviewed that and says she has nothing more
5 to add and no unique knowledge beyond that. But even if she
6 did have different criteria, again, it does not suggest
7 that Mr. Shaukat acted with discriminatory animus, and it
8 doesn't advance Ms. Rowe's claim on any of the causes of
9 action that she put forward.
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11 We have completely covered this in depositions
12 with Mr. Shaukat, Mr. Stuart Vardaman, who was the
13 executive recruiter working with Mr. Shaukat for the role,
14 to fill the role. And it's laid out in Ms. Greene's
15 deposition that she just simply doesn't recall, even when
16 presented with the information that Mr. Shaukat put into
17 the record about his involvement, his role, and his
18 discussions with Ms. Greene about the topic.

19 Unless you have further questions about that
20 bucket, your Honor, I'd like to move onto the leveling
21 decision.

22 THE COURT: Keep going, yes.

23 MS. TOMEZSKO: Sure. So plaintiff has reviewed
24 Jenny Burgess, who, as Ms. Cara Greene has indicated was
25 the recruiter who worked with the hiring manager and others

1 to fill the role of the director of the Office of the CTO.
2 So this is the role that plaintiff was initially hired into
3 and that some of the men who performed the role under a
4 similar title were hired into, as well. There's no evidence
5 that Diane Greene actually made any determinations with
6 respect to their compensation or their level for either
7 plaintiff or any of her comparators. She clearly was not a
8 decision-maker because there is no testimony showing that
9 she was nor any documents showing that she was a final
10 decision-maker as to levels. And even when asked about it
11 in preparation for her declaration, she doesn't recall
12 weighing in on anyone's level or anyone's compensation and
13 believes those decisions were made by others. Jenny
14 Burgess, in her deposition, testified that Diane Greene had
15 access to hiring packets, but there's no evidence that she
16 actually reviewed them; and there's certainly no evidence
17 that she actually reviewed the hiring packet of the
18 plaintiff here, which is the decision that we need to focus
19 on in order to prove a discrimination claim.
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21 Now, yes, she was tangentially involved in the
22 decision to hire one of the senior engineers that Ms. Rowe
23 claims is a comparator, but if you read her declaration, it
24 shows that she was involved in a very specific and very
25 narrow piece of that one decision, and it had to do with

the fact that he was being hired from a customer. So the only involvement that she had was making sure from a business perspective this would be an appropriate action for Google to take, to essentially hire away the senior engineer from one of their customers, who was an early adopter of Google Cloud. But even there she says she doesn't recall having any input into that senior engineer's compensation or level upon hire; it was more along the lines of is it okay to hire him away from a customer. And I don't think, now that that is in the record, there's any additive value in deposing Ms. Greene about that decision because she's already laid out everything she knows about it here.

And, finally, to the -- address the fact that Ms. Rowe had in an email raised concerns about her initial leveling decision -- this was on November 17, 2018 -- there's -- we have already showed her that email. It was an exhibit to Tariq's declaration submitted in support of this motion. She reviewed it. She said she doesn't recall receiving it. And what she does recall is at the time that that email was sent to her and Mr. Shaukat, that she had announced her departure from Google Cloud and was busy making preparations to exit the company. So it doesn't follow that she would have necessarily been, number one,

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2 super focused on this email and would have done anything
3 about it, given that she knew that, number one, Mr. Shaukat
4 was also copied on it and as plaintiff's direct manager
5 would have been in a better position to deal with it; and
6 also, the fact that it had already been raised to HR and HR
7 was investigating it.

8 What more does plaintiff think that Ms. Greene
9 will say or could possibly say to advance an argument for
10 punitive damages? She was preparing to leave the company;
11 someone else was copied on the email, someone in a better
12 position to handle it; and HR was in the process of
13 investigating. There's nothing more that deposing
14 Ms. Greene is going to add here.

15 And so, with all of that, I think the evidence is
16 clear that we have the benefit of a fulsome discovery
17 record here. Plaintiff has deposed nine people, nine fact
18 witnesses who were intimately involved in the decisions at
19 issue here. They have testified to various extents that
20 they did not have any communications with Ms. Greene about
21 these decisions. And to the extent that information about
22 the decisions was made available to her as a senior
23 executive doesn't suggest that she has anything unique to
24 add to this case that's going to advance the ball one way
25 or the other for plaintiff or defendant. And given all that

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2 and the fact that so much discovery has taken place that
3 the limited value of any deposition testimony that
4 Ms. Greene can offer is far outweighed by the
5 disproportionate impact that another deposition will have
6 on this case, particularly where she has already said under
7 oath she doesn't recall anything about these decisions that
8 happened years ago.

9 THE COURT: Okay. You know, there's the fact that
10 she's now a third-party witness, which brings in a Rule 45
11 standard. But there's also the fact that the sort of
12 theory of the case law in terms of high-level depositions
13 is that the person is too busy to be deposed. And you've
14 given us nothing on that. I assume that was intentional.
15 But you would have to admit that that detracts from the
16 principle in many of the cases, which is these executives
17 have other things they have to focus on. I don't have that
18 here.

19 MS. TOMEZSKO: I would disagree, your Honor. I
20 think the cases are clear that being busy alone is in
21 itself not enough to justify not taking a deposition,
22 right? So it can't be the case just that being busy is the
23 gravamen of the reason why a senior executive would not be
24 deposed. And even if she is not busy with Google matters
25 presently, she is still a well-known name in the industry,

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and she does have another position with MIT at the moment.
So clearly, she is busy but maybe not on Google efforts.

But more importantly than that, the fact that she is so far removed from these decisions, at least one level in each case, and she doesn't have additional relevant testimony to add, I think that is really where the case is centered, on the fact that you have to, if you're in a position, a senior executive position, which by virtue of just being a senior executive would suggest that you are not intimately involved in these decisions, that you have delegated and relied upon your subordinates, who are themselves executives, to actually implement and undertake, that if you don't have unique knowledge, the deposition is unwarranted. And we just don't think that she's presented any evidence that Diane Greene is going to have unique knowledge here that would warrant the deposition, so we don't think she's entitled to it.

THE COURT: All right, Ms. Greene?

MS. GREENE: Yes, your Honor. If we look at Ms. Greene's declaration, I think it's very important to note how it's been crafted. For instance, in paragraph six she says, "I have no recollection of approving hiring packets." She doesn't say, "I did not approve hiring packets," or, "I was not involved in that." She's saying,

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2 you know, I have no recollection, except for one senior
3 engineer. Right? So she recalls with specificity one. We
4 should be able to test her on that.

5 In seven she says, "I have no specific
6 recollection of being involved in any decision as it
7 relates to plaintiff, Ulku Rowe's hire." That suggests she
8 may have a general recollection, and that's a general
9 recollection we should be able to question her about.

10 With respect to the leveling decision, I think it
11 very much matters if she disputes or disavows that she
12 had -- that she was the one who approved the leveling
13 decision, that is absolutely relevant to the defenses that
14 Google might assert with respect to the leveling decisions,
15 because it throws into question whether there was a
16 process, in fact, that they were following; whether it was
17 a subjective decision that was outside of their ordinary
18 processes. And so given that Jenny Burgess has pointed to
19 Ms. Greene as the decision-maker with respect to this
20 process outside of what would ordinarily be in the hiring
21 committee, we should be able to test her. And whatever her
22 testimony is, whether it's, "I don't recollect," whether
23 it's, "No, I was not involved," or, "Yes, I was involved,"
24 is going to be relevant to the claims and defenses in this
25 matter.

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THE COURT: Well, I mean, you have the testimony that she doesn't have those recollections, right?

MS. GREENE: Well, we have the testimony that she doesn't have a specific recollection. We don't know what her general recollection is, and we don't know what her recollection may be when actually presented with the documents that Ms. Burgess said she reviewed. Actually looking at the hiring packets may very well trigger and refresh her recollection. We know that, you know, memories are not exact. For instance, Mr. Shaukat at his deposition did not recall the conversation that he later mentioned in his declaration that he had with Ms. Greene. So, you know, memories are subject to revision and recollection and refreshing of that recollection. And that's why there are depositions. It's why there's not simply each side doesn't put forward declarations from their witnesses and why the other side has an opportunity to test, to probe, to present documents that may change, alter or refresh the recollection.

THE COURT: Okay.

MS. TOMEZSKO: May I respond, your Honor, to that point?

THE COURT: Sure. Go ahead.

MS. TOMEZSKO: I don't think there's any testimony

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2 in Jenny Burgess's deposition that she was a decision-
3 maker. The only thing that Jenny says or Ms. Burgess says
4 is that she had access to the information. She then goes on
5 to say in her deposition that Will Graniss as the hiring
6 manager made the final leveling recommendation.

7 And so let's assume that Diane Greene did look at
8 the packet and she accepted someone else's recommendation,
9 okay, you've already had the opportunity to depose the
10 individual who made the recommendation in the first place,
11 and there's really nothing to suggest that she did get
12 involved in plaintiff's hiring recommendation at all. You
13 do have both her general and her specific testimony on this
14 point. Paragraph six is that she has no recollection of
15 approving hiring packets for anyone hired into OCTO except
16 for one senior engineer. That is a general understanding
17 of what she remembers, which is to say nothing about being
18 involved in this process. Then you have her specific
19 testimony that she has no specific recollection of being
20 involved in any decision as it relates to plaintiff, Ulku
21 Rose's hire.

22 So I don't hear anything from plaintiff suggesting
23 that a deposition of Diane Greene is going to give us more
24 information than what has already been in the record
25 through her declaration.

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2 THE COURT: I'll give Ms. Greene another chance to
3 respond, if she wants.

4 MS. GREENE: I would just note, your Honor, that,
5 again, Ms. Burgess, in communicating to HR, indicated that
6 it was Ms. Greene who made the signoffs. What --

7 THE COURT: Did you --

8 MS. GREENE: -- independent factors she
9 considered --

10 THE COURT: -- did you depose Ms. Burgess?

11 MS. GREENE: We did.

12 THE COURT: Did you ask her about what Greene's
13 involvement was?

14 MS. GREENE: We -- your Honor, I don't have that
15 deposition in front of me. I do know, though, that she -- I
16 recall asking her with respect to her indication to HR that
17 it was Ms. Greene, whether that -- what she said to HR was
18 accurate. I do recall her saying that, yes, that was
19 accurate. And so it would have been Ms. Greene who
20 reviewed and approved the recommendation.

21 On that point with respect to the recommendation,
22 it was simply a recommendation. Ms. Greene would have had
23 to make an assessment whether to accept that recommendation
24 or not, and what factors she considered in evaluating
25 whether the recommendation was appropriate with respect to

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the leveling is relevant with respect to the affirmative defenses that Google might assert and has asserted, in fact, in their answer.

THE COURT: I'm trying to follow this last point. So you're saying she approved the packet; is that what this person testified to, that Greene was approving these packets?

MS. GREENE: The recommendation that she reviewed them, approved them, and passed them onto Urs.

THE COURT: Okay. And you said that's going to -- the part you said at the end, that that's going to affect their defenses --

MS. GREENE: The affirmative defenses --

THE COURT: -- what were you referring to?

MS. GREENE: -- yes, your Honor. So with respect to equal-pay claims, the affirmative defenses that the decision -- that the inequity between the compensation is the result of a seniority-based system, a production-based system, a performance-based system or any other factor that's relevant to the job. And that's a very loose statement of the affirmative defenses. But Ms. Greene as the decision-maker will have testimony about whether she was considering in fact any of those things in approving the leveling decision or not. If she says, you know, "I was

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not considering that; I was not given, you know, any specific criteria with respect to why this leveling recommendation was made," than as the person who made the decision with respect to leveling, she won't be able to assert that it was based on a performance-based system, for instance. These are affirmative defenses, and the decision-maker with respect to leveling is in a unique position to know what factors they considered in making that final decision with respect to leveling.

THE COURT: Ms. Tomezsko, do you -- I know you say she doesn't recollect it, but is there some other response to that point?

MS. TOMEZSKO: Yes, your Honor. I actually do have Jenny Burgess's deposition in front of me, and nowhere does she say that Diane Greene was a decision-maker in the process. I can tell you what she does say. She does say that she doesn't know if Ms. Greene reviewed all the packets for the technical director candidates, just that she had access to them. And she identifies that there were others who may have made the leveling decision. But she never names Ms. Diane Greene as the person who did. She said that the decision -- when asked was the decision about the level approval documented anywhere, Ms. Burgess replied under oath, yes, in G-Hire. Plaintiff already has the G-

Hire documents that Ms. Burgess was referring to there. And Ms. Greene's name as a decision-maker appears nowhere in those documents.

So she already has said that she does not have a recollection of any of the specific items that plaintiff just raised. I don't see why we would make her sit for a deposition to just repeat that, and I don't think that putting hiring packets in front of her that she simply doesn't recall is going to do anything but waste the parties' time here.

THE COURT: Ms. Tomezsko, just quickly, if you want to say anything else? If you've said it all, you don't have to say anything.

MS. TOMEZSKO: I'm fine, your Honor. Thank you.

THE COURT: Folks, give me just one minute, all right?

MS. GREENE: Yes, your Honor.

(Brief silence.)

THE COURT: All right, everybody. You know, this is a very fact-specific determination, and I'm not going to go over all the facts, because they've been articulated by the parties. But I've made my judgment, and I'm going to grant the application for a Protective Order and deny plaintiff's request to take this deposition. I'm doing this

1 on the basis of the fact that this is, you know, now a
2 person who's no longer associated with Google, she's a
3 recipient of a third-party subpoena. There's a special
4 level of solicitude that goes along with that. I've
5 evaluated the importance of the discovery and also
6 evaluated her declaration regarding her lack of knowledge,
7 considering the burden, and I don't think that the benefit
8 of this potential discovery, I find it to be very minimal.
9 And it doesn't outweigh the burden on Ms. Greene.
10

11 So that's my ruling, everyone. Anything else we
12 need to do during this conference? Anything from
13 plaintiff's side?

14 MS. GREENE: Your Honor, I would just note that we
15 filed a pre-motion letter on another topic, which is
16 awaiting your Honor's direction with respect to whether
17 there will be a full briefing on that motion. And --

18 THE COURT: Hold on, hold on, hold on. Give me a
19 second or tell me what it is.

20 MS. GREENE: This is with respect to discovery
21 related to comparators and --

22 THE COURT: Was there a response yet, or have I
23 just missed it --

24 MS. GREENE: There has been a response. The
25 initial docket number I believe is Docket 79, and the

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response is Docket 84. And this was just before the holidays, so --

THE COURT: Okay. All right. So I guess we'll -- I'll probably set up a call on that unless I can do it on the papers. Thank you for reminding me.

MS. GREENE: And then, as well, we have another motion to supplement the pleadings, which will be fully briefed today. I believe our reply is due today. And so if your Honor desires oral arguments, it may be possible to combine those two, the two pending motions.

THE COURT: Okay, I'll look into that, as well. Anything else from plaintiff's side?

MS. GREENE: Nothing else from plaintiff. Thank you, your Honor.

THE COURT: From defendant?

MS. TOMEZSKO: Nothing further from defendant. Thank you, your Honor.

THE COURT: All right. Thank you. Good-bye.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Rowe v. Google LLC, Docket #19-cv-08655-LGS-GWG, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: January 18, 2021